

### **REMARKS**

This Amendment is responsive to the Office Action dated August 21, 2008. Applicant has amended claims 1, 19, 38, 55, and 56. Claims 1, 5-19, 23-38, and 42-56 remain pending.

#### **Claim Rejections Under 35 U.S.C. § 103**

In the Office Action, the Examiner rejected:

- claims 1, 5-13, 16, 18, 19, 23-30, 32, 35, 36-38, 42-46 and 48-56 under 35 U.S.C. 103(a) as being unpatentable over Meadows et al. (US 6,381,496, hereinafter “Meadows”) in view of Sheldon (US 5,593,431).
- claims 17 and 33 under 35 U.S.C. 103(a) as being unpatentable over Meadows in view of Sheldon, as applied to claims 16 and 32 above, and further in view of Schallhorn (US 6,120,467).
- claims 15 and 34 under 35 U.S.C. 103(a) as being unpatentable over Meadows in view of Sheldon, as applied to claims 1 and 19 above, and further in view of Stein (US 2002/0038137).
- claims 14, 31 and 47 under 35 U.S.C. 103(a) as being unpatentable over Meadows in view of Sheldon, as applied to claims 8, 27 and 43 above, and further in view of Christopherson et al. (US 5,944,680).

Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant’s claims, and provide no rational reason for modification to arrive at the claimed invention.

#### ***Independent claims 1, 19, 38, and 56***

Amended claim 1 recites a method comprising monitoring an output of a sensor, the output of the sensor reflecting a physiological parameter of a patient, initially defining an event based on the monitoring of the sensor output, wherein initially defining the event comprises storing an indication of the monitored sensor output within a memory as the defined event, monitoring therapy delivered by a medical device when the event was initially defined, generating therapy information based on the monitoring of the therapy when the event was initially defined, associating the therapy information with the defined event within the memory,

subsequently detecting the defined event by monitoring the output of the sensor and comparing the sensor output to the defined event, and automatically providing therapy to the patient via the medical device according to the therapy information associated with the defined event in response to the detection. Amended independent claims 19, 38, and 56 recite substantially similar limitations. Claim 55 depends from independent claim 1, and has also been amended in a manner consistent with the amendment to claim 1.

Applicant has amended independent claims 1, 19, 38, and 56 to further clarify the features of the claims and distinguish the applied references. The amended claims clarify that the therapy delivered by the medical device is monitored when the event was initially defined, and the therapy information is generated based on the monitoring of the therapy when the event was initially defined. Meadows in view of Sheldon fail to teach or suggest at least these features of the independent claims.

The Examiner acknowledged that Meadows does not disclose initially defining an event by storing an indication of the monitored sensor output within a memory.<sup>1</sup> In an effort to overcome this deficiency of Meadows with respect to Applicant's claims, the Examiner cited Sheldon. The Examiner argued that Sheldon teaches an implantable medical device comprising an accelerometer and a means for initially defining an event by storing an indication of the monitored sensor output within memory.<sup>2</sup> The Examiner concluded that it would be obvious to modify Meadows' invention by providing a means for initially defining an event by storing an indication of the monitored sensor output within a memory, per Sheldon.<sup>3</sup>

However, neither Meadows nor Sheldon teaches or suggests monitoring therapy delivered by a medical device when the event was initially defined, and generating therapy information based on the monitoring of the therapy when the event was initially defined, as required by amended independent claim 1, or the similar requirements of the other independent claims. Meadows does teach or suggest monitoring therapy delivered by a medical device when the event was initially defined, as required by the independent claims, at least because, as admitted by the Examiner, Meadows does not initially define an event based on monitoring the output of a sensor. Furthermore, Sheldon does not contemplate monitoring therapy during the calibration

---

<sup>1</sup> Office Action, dated 8/17/08, page 3.

<sup>2</sup> Office Action, dated 8/17/08, page 3.

<sup>3</sup> Office Action, dated 8/17/08, pages 3-4.

process depicted and described at FIG. 13 and col. 15 lines 11-47 of Sheldon, which the Examiner argued is an initial definition of an event. Nor does Sheldon disclose or suggest generating therapy information based on therapy monitoring during the calibration, or associating the generated therapy information with the newly defined event in a memory.

Sheldon also does not provide any rational reason to monitor therapy during calibration, i.e., while determining DC acceleration and creating posture confidence intervals. In Sheldon, the determined DC acceleration and created posture confidence intervals may be subsequently used to effect the delivery of a therapy to the patient, e.g., by controlling the pacing rate of a rate responsive pacemaker.<sup>4</sup> However, Sheldon does not in any way suggest that the therapy changes are based on therapy monitoring that occurred during the calibration.

### ***Dependent claims***

The dependent claims are allowable for at least the reasons stated above with respect to the independent claims. Christopherson, Stein and Schallhorn fail to provide any teaching that would overcome the deficiencies of Meadows and Sheldon with respect to the independent claims. Furthermore, the dependent claims recite features that are not disclosed or suggested by the applied references.

For example, with respect to claims 14, 31 and 37, Christopherson at col. 26, lines 21-56 describes delaying therapy based on an artifact counter. If the respiratory waveform continues to be too variable or multiple motion artifacts are occurring while in suspension mode, then the artifact counter will cause the algorithm to delay therapy. Accordingly, contrary to claims 14, 31, and 37, Christopherson receives no value and time from the user, and also does not change a therapy based on a time received from a user. Instead, Christopherson delays therapy based on the characteristics of a respiratory waveform.

---

<sup>4</sup> Sheldon, Abstract.

For at least these reasons, the applied references fail to teach or suggest every feature of Applicant's claims, and provide no rational reason to arrive at the features of the claims. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of Applicant's claims.

### CONCLUSION

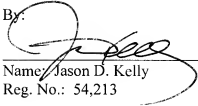
All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

10-21-08

SHUMAKER & SIEFFERT, P.A.  
1625 Radio Drive, Suite 300  
Woodbury, Minnesota 55125  
Telephone: 651.286.8350  
Facsimile: 651.735.1102

By:

  
Name: Jason D. Kelly  
Reg. No.: 54,213